

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JERRY R. KECK,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security;

Defendant.

8:18CV476

ORDER

This matter is before the Court on plaintiff's motion to set aside judgment dated July 9, 2020, affirming the Commissioner's decision. [Filing No. 30](#). The government has filed a brief in support of the motion, [Filing No. 31](#). The Court finds this motion is timely pursuant to [Fed. R. Civ. P. 60\(c\)\(1\)](#) ("A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding."); see [Buck v. Davis, 137 S. Ct. 759, 777-80 \(2017\)](#) (permitting wide discretion to courts to grant relief). Judge Laurie Smith Camp initially held this case in abeyance pending a decision on an Appointments Clause argument being decided by the Eighth Circuit. The Eighth Circuit decided this case, and on July 9, 2020, Judge Smith Camp entered an Order affirming the Commissioner. Petitioner filed for certiorari to the Supreme Court. Filing Nos. 26 and 27 (where Eighth Circuit was reversed). In April of 2021, this case was reassigned to the undersigned. The Eighth Circuit appeal was remanded to the District Court. The parties have agreed that remand to the Commissioner is the appropriate way to resolve this case. According to

the parties, a new administrative judge will be appointed, and a new hearing will be conducted.

The Court has carefully reviewed the motion and brief and finds it should be granted pursuant to [Fed. R. Civ. P. 60\(b\)\(6\)](#).

THEREFORE, IT IS ORDERED THAT:

1. The Order and Judgment affirming the Commissioner's Decision, Filing Nos. 22 and 23, are vacated;
2. The decision of the Commissioner is reversed and remanded, and plaintiff's claim will be heard before a new administrative law judge; and
3. The plaintiff's motion to set aside, [Filing No. 30](#), this Court's Order and Judgment, Filing Nos. 24-25, is granted.

Dated this 25th day of May, 2021.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge